

# ATTACHMENT 12

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SURGICAL INSTRUMENT SERVICE  
COMPANY, INC.,

Plaintiff,

v.

INTUITIVE SURGICAL, INC.,

Defendant.

Case No.: 3:21-cv-03496-VC

**Expert Report of Richard F. Bero, CPA, CVA**  
**December 2, 2022**

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- I assume the parties’ reported revenue, costs and other data are generally accurate and reliable;<sup>11</sup>
- SIS would have had the capability / capacity to make the lost sales;<sup>12</sup>
- Rebotix or Restore would have had the capability and capacity to produce enough chips to be used in SIS’s EndoWrist repairs;<sup>13</sup>
- SIS would not need FDA approval to make its repairs;<sup>14</sup>

In Scenario 1, I assume:

- SIS would have been able to repair both S/Si and X/Xi EndoWrist instruments as of January 1, 2020 (I refer to this as the “In-house model”);<sup>15</sup>
- Alternatively, Rebotix or Restore would have been able to repair both S/Si and X/Xi EndoWrist instruments as of January 1, 2020 (I refer to this as the “Distributor model”);<sup>16</sup>

In Scenario 2, I assume:

- SIS would have been able to repair S/Si EndoWrist instruments as of January 1, 2020 (the In-house model);<sup>17</sup>
- Alternatively, Rebotix or Restore would have been able to repair the S/Si EndoWrist instruments as of January 1, 2020 (the Distributor model);<sup>18</sup>
- SIS (relying on either Rebotix, Restore or another third-party technology provider) would have been able to reset the X/Xi EndoWrist instruments use counter either by January 1, 2021 or January 1, 2022, and SIS, Rebotix or Restore would have been able to repair X/Xi EndoWrist instruments as of either January 1, 2021 or January 1 2022;<sup>19</sup>

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<sup>11</sup> If the parties’ reported information is incorrect, I reserve the right to update my analyses accordingly.

<sup>12</sup> As addressed herein.

<sup>13</sup> Based on SIS’s relationships with Rebotix / Restore prior to the Alleged Wrongdoings as addressed herein. Rebotix and Restore are defined below.

<sup>14</sup> Discussions with Keith Johnson and Greg Posdal. *See also*, Deposition of Imron Zafar (November 1, 2022) Ex. 113 at 3.

<sup>15</sup> As addressed herein.

<sup>16</sup> Based on SIS’s relationships with Rebotix / Restore prior to the Alleged Wrongdoings as addressed herein.

<sup>17</sup> As addressed herein.

<sup>18</sup> Based on SIS’s relationships with Rebotix / Restore prior to the Alleged Wrongdoings as addressed herein.

<sup>19</sup> Based on SIS’s relationships with Rebotix / Restore prior to the Alleged Wrongdoings as addressed herein and discussion with Kurt Humphrey, SIS’s technical expert.



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**Table 2: Intuitive Surgical, Inc. – Historical Financial Summary (in millions)**

	2016	2017	2018	2019	2020	2021
Revenue	\$2,706.5	\$3,138.2	\$3,724.2	\$4,478.5	\$4,358.4	\$5,710.1
Gross Profit	\$1,892.9	\$2,202.0	\$2,604.1	\$3,110.2	\$2,861.2	\$3,958.5
Gross Margin %	70%	70%	70%	69%	66%	69%
Income from Operations	\$949.7	\$1,062.9	\$1,199.4	\$1,374.5	\$1,049.8	\$1,821.0
Income from Operations %	35%	34%	32%	31%	24%	32%

**III. Additional Parties not in suit – Rebotix and Restore****A. Rebotix**

Rebotix Repair LLC (“Rebotix”) is a Florida limited liability company with its principal address in St. Petersburg, Florida.<sup>53</sup> Rebotix provides service and replacement components that help hospitals get back in control of their robotic surgical instruments, such as repairing EndoWrist instruments used in da Vinci robotic surgeries.<sup>54</sup>

Rebotix also sued Intuitive for issues related to servicing its EndoWrists, in which Rebotix claimed: (1) Tying; (2) Exclusive Dealing; (3) Monopolization; and (4) Attempted Monopolization.<sup>55</sup> I understand that case has settled.

In the spring / summer of 2019, SIS began working with Rebotix on its EndoWrist repair business.<sup>56</sup> SIS initially provided the repair business customers while Rebotix provided the “Interceptor chip” (or “repair chip”) to reset S / Si EndoWrist counters enabling additional EndoWrist uses as well as the actual repair.<sup>57</sup>

[REDACTED]<sup>58</sup> The Interceptor was developed for Rebotix by a [REDACTED]

<sup>53</sup> Compl. ¶ 5 (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

<sup>54</sup> <https://rebotixrepair.com>. Compl. ¶ 5 (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

<sup>55</sup> Compl. ¶¶ 62-73 (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

<sup>56</sup> 30(b)(1) Deposition of Greg Posdal 23-25 (November 1, 2022).

<sup>57</sup> 30(b)(1) Deposition of Greg Posdal 25 (November 1, 2022).

<sup>58</sup> Deposition of Chris Gibson 35-38 (June 22, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

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Rebotix started working with Restore (as addressed below) in 2018.<sup>71</sup> Originally, Restore was going to be a distributor for Rebotix, meaning they would get the EndoWrists from hospitals, send them to Rebotix for repair and reset, and then deliver them back to hospitals.<sup>72</sup> Restore then started buying Interceptors from Rebotix, so that Restore could do the repair and reset.<sup>73</sup> Rebotix sold the Interceptor to Restore for an average price of approximately \$533 per chip.<sup>74</sup> It appears Restore received a larger discount with higher chip purchases.<sup>75</sup> Ultimately, Rebotix stopped working with Restore because Restore wasn’t doing the volume Rebotix expected them to have.<sup>76</sup>

## B. Restore

Restore Robotics LLC and Restore Robotics Repair LLC (collectively, “Restore”) are Florida limited liability companies with their principal address in Panama City Beach, Florida.<sup>77</sup> They are sister companies with common ownership having majority control of both companies.<sup>78</sup> Restore services surgical robots and related instruments, Restore Robotics is the sales arm and Restore Robotics Repairs is the operations arm.<sup>79</sup>

Restore also sued Intuitive for issues related to servicing its EndoWrists, in which Rebotix claimed: (1) Monopolization; (2) Attempted Monopolization; (3) Tying; and (4) Exclusive Dealing.<sup>80</sup> I understand the case is ongoing.

SIS and Restore are partners in SIS’s EndoWrist recovery business.<sup>81</sup> SIS’s EndoWrist recovery business identifies an EndoWrists’ available lives remaining and confirms EndoWrist

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<sup>71</sup> Deposition of Clifton Parker 142 (October 25, 2022).

<sup>72</sup> Deposition of Chris Gibson 143-144 (June 22, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

<sup>73</sup> Deposition of Chris Gibson 144 (June 22, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

<sup>74</sup> **Schedule 10.0.**

<sup>75</sup> **Schedule 10.0.**

<sup>76</sup> Deposition of Chris Gibson 145-146 (June 22, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

<sup>77</sup> Second Am. Compl. ¶ 1 (*Restore Robotics LLC, et al. v. Intuitive Surgical, Inc.*, No. 5:19-cv-00055-TKW-MJF (N.D. Fla. filed Feb. 27, 2019)).

<sup>78</sup> Second Am. Compl. ¶ 1 (*Restore Robotics LLC, et al. v. Intuitive Surgical, Inc.*, No. 5:19-cv-00055-TKW-MJF (N.D. Fla. filed Feb. 27, 2019)).

<sup>79</sup> Second Am. Compl. ¶ 1 (*Restore Robotics LLC, et al. v. Intuitive Surgical, Inc.*, No. 5:19-cv-00055-TKW-MJF (N.D. Fla. filed Feb. 27, 2019)).

<sup>80</sup> Second Am. Compl. ¶¶ 106-129 (*Restore Robotics LLC, et al. v. Intuitive Surgical, Inc.*, No. 5:19-cv-00055-TKW-MJF (N.D. Fla. filed Feb. 27, 2019)).

<sup>81</sup> 30(b)(6) Deposition of Greg Posdal 51 (November 1, 2022).